Filed 1/28/19 In re A.P. CA2/6

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

In re A.P., a Person Coming Under the Juvenile Court Law.	2d Juv. No. B286019 (Super. Ct. No. FJ54533) (Los Angeles County)
THE PEOPLE, Plaintiff and Respondent, v. A.P., Defendant and Appellant.	

On January 31, 2017,[1] the Los Angeles County District Attorney filed a petition under Welfare and Institutions Code section 602 alleging that appellant A.P., a 13-year-old minor, committed the felony offense of driving or taking a vehicle

[1] All relevant dates are in 2017.

without consent (Veh. Code, § 10851, subd. (a); count 1); and the misdemeanor offense of driving a motor vehicle without a valid driver's license (*id.*, § 12500, subd. (a); count 2). The petition did not allege that the value of the vehicle exceeded $950.

On February 27, a second Welfare and Institutions Code section 602 petition was filed. It alleged that appellant committed the felony offense of driving or taking a vehicle without consent (Veh. Code, § 10851, subd. (a); count 1); fled a pursuing officer's motor vehicle (*id.*, § 2800.1, subd. (a); count 2); and possessed burglar's tools (Pen. Code, § 466;[2] count 3)). Once again, the petition did not allege that the value of the vehicle exceeded $950.

On April 5, appellant admitted that count 1 of the January 31 petition was true, and the remaining count was dismissed. Appellant also admitted counts 1 and 2 of the February 27 petition. Appellant was placed at home on probation.

On August 11, the District Attorney filed a third Welfare and Institutions Code section 602 petition alleging cruelty to an animal under section 597, subdivision (b). The petition subsequently was amended to allege a violation of section 597, subdivision (a). Following an evidentiary hearing on September 29, the juvenile court sustained the petition and found the offense to be a misdemeanor. The court revoked the home on probation order, ordered appellant to be suitably placed, and set the maximum period of confinement at four years, four months. Four years of that term were for the prior Vehicle Code section 10851 violations.

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[2] All statutory references are to the Penal Code unless otherwise specified.

Appellant appeals the September 29 jurisdictional and dispositional order. He contends the evidence is insufficient to support the juvenile court's finding that he intentionally wounded an animal (§ 597, subd. (a)). We reject this contention.

Appellant also claims his admission of the Vehicle Code section 10851 violations did not establish the felonious nature of those offenses because there were no allegations or evidence regarding the value of the vehicles involved. We agree with appellant and accordingly reverse and remand with directions.

FACTS

On May 30, Alexis Tarin, an animal control officer, and her partner, Lisette Ryan, saw two stray dogs in a park in El Monte. While Tarin and Ryan were trying to catch the dogs, appellant and another male teenager started stomping and kicking at the dogs. The teens were "really close" to the dogs, but they did not actually make contact with them. The teens did not comply when Tarin and Ryan told them to stop stomping and kicking.

Eventually, the teens started to walk down a sidewalk. Two ducks, a male and a female, flew into the park. The teens picked up discarded aluminum cans and other objects and began throwing them at the ducks. As the ducks walked away, appellant threw a brown paper bag containing an object. The object appeared to be cylindrical and resembled an aluminum can. The object, which made a "thump noise" when it fell to the ground, hit the female duck as she was flying away.

The impact of the object caused the female duck to fall to the ground on her side. When the duck got back on her feet, she appeared to be "unbalanced, walking away, toward the side." The duck was limping, and her left wing was "extended, but crooked." Tarin did not see any blood or loose feathers.

Tarin waved down a passing police officer, Sergeant Beatriz Guadarrama. After speaking with Guadarrama, and pointing out the two teens, Tarin found the female duck. Tarin attempted to catch the duck, but was unable to do so. After a half hour or so, the duck flew away. Tarin did not retrieve the brown paper bag and object that appellant had thrown.

Tarin identified appellant and his companion once they were detained by police. When Tarin told Sergeant Guadarrama that appellant had thrown a brown paper bag containing an object at the duck, appellant stated, "I did not throw anything at the duck."

Sergeant Guadarrama searched for but could not find the brown paper bag. She also did not notice cans or bottles on the ground. Guadarrama never saw the duck.

The juvenile court found that appellant's conduct as related to the dogs was "annoying and delinquent" and "stupid and juvenile," but concluded it "did not rise to criminal conduct." With respect to the duck, however, the court determined there was criminal liability. It did not believe the conduct constituted maiming, mutilating or torturing of the duck, but noted that "the statute does say wound, and a wound in the common parlance is to injure, and clearly when the object, whatever it is, strikes the animal in flight or on the ground, it's injured. It's wounded. It may not be a mortal wound, but there's nothing in the statute that says it has to be a mortal wound."

DISCUSSION

Animal Cruelty Allegation

The juvenile court found true that appellant was cruel to an animal within the meaning of section 597, subdivision (a). That section requires the malicious and intentional maiming,

mutilating, torturing or wounding of a living animal. Appellant argues the harm done to the duck in this case does not satisfy any of these requirements and, as a result, the evidence was insufficient to sustain a true finding on the allegation of cruelty to an animal.

In determining whether the evidence is sufficient to support the verdict, we review the entire record in the light most favorable to the judgment and presume the existence of every fact the fact finder could reasonably deduce from the evidence. The issue is whether the record discloses evidence that is reasonable, credible and of solid value such that a rational trier of fact could find the elements of the offense beyond a reasonable doubt. (*People v. Brown* (1995) 35 Cal.App.4th 1585, 1598.)

The juvenile court determined the duck had not been maimed, mutilated or tortured. It found that she had been injured and that the injury constituted a wound, as contemplated by section 597, subdivision (a). The issue is whether the injury suffered satisfies the statutory definition of wound.

"Our primary task in interpreting the statute is to determine the lawmakers' intent. [Citation.] We begin with the words of the statute and their usual and ordinary meaning, *which would typically be their dictionary definition.* [Citations.] Their plain meaning controls, unless the words are ambiguous. [Citation.] 'If the statute is ambiguous, we may consider a variety of extrinsic aids, including legislative history, the statute's purpose, and public policy.' [Citation.]" (*People v. Costella* (2017) 11 Cal.App.5th 1, 5-6, italics added.) "Where the words of the statute are clear, we may not add to or alter them to accomplish a purpose that does not appear on the face of the

statute or from its legislative history." (*Burden v. Snowden* (1992) 2 Cal.4th 556, 562.)

The word "wound" is not ambiguous. It is defined in various dictionaries as "an injury to the body (as from violence, accident, or surgery) that typically involves laceration or breaking of a membrane (such as the skin) and usually damage to underlying tissues";[3] "damage to part of your body, especially a cut or a hole in your flesh, which is caused by a gun, knife, or other weapon";[4] "[a]n injury to living tissue caused by a cut, blow, or other impact, typically one in which the skin is cut or broken";[5] "a hurt or injury to the body, such as a cut or tear in the skin or flesh";[6] "an injury in which your skin or flesh is damaged, usually seriously";[7] "injury to the person [b]y which the skin is broken";[8] and an injury whereby "the integrity of any tissue is compromised (e.g. skin breaks, muscle tears, burns, or bone fractures)."[9]

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[3] <https://www.merriam-webster.com/dictionary/wound>

[4] <https://www.collinsdictionary.com/dictionary/english/Wound>

[5] <https://en.oxforddictionaries.com/definition/wound>

[6] <https://dictionary.cambridge.org/us/dictionary/english/Wound>

[7] <https://www.macmillandictionary.com/us/dictionary/american/wound_1>

[8] <https://thelawdictionary.org/wound/>

[9] <https://medical-dictionary.thefreedictionary.com/Wounds>

Here, there was evidence that the duck, after being struck with the object, fell to the ground, was "unbalanced" and was walking "toward the side." The duck also was limping and her extended left wing was crooked. The duck was unable to fly for at least a half hour after being struck. These symptoms constitute substantial evidence that the duck experienced some type of tissue damage or muscle tear.

Appellant contends the evidence was insufficient because the prosecution did not prove that the duck suffered a laceration or the breaking of a membrane, but we conclude the definition of "wound" is not so restrictive. Although a wound may *typically* involve a laceration or membrane rupture, it is sufficient that there be "an injury to the body (as from violence, accident, or surgery)" or "damage" to the body caused by a "blow, or other impact."[10] A reasonable inference from the evidence in this case is that appellant wounded the duck in violation of section 597, subdivision (a).

Vehicle Code Section 10851 Violations

Appellant contends that because his admission of the two Vehicle Code section 10851 violations occurred prior to our Supreme Court's decision in *People v. Page* (2017) 3 Cal.5th 1175 (*Page*), the felonious nature of those offenses was not established. Specifically, he argues that a felony violation of Vehicle Code section 10851, driving or taking a vehicle without the owner's consent, requires that the vehicle in question be valued at more than $950. The Welfare and Institutions Code section 602

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[10]<https://www.merriam-webster.com/dictionary/wound>; <https://www.collinsdictionary.com/dictionary/english/Wound>; <https://en.oxforddictionaries.com/definition/wound>

petitions did not allege the value of the two vehicles that were taken, and the prosecution did not proffer evidence of their value.

The People respond that appellant's admission encompassed every element of the felony offenses, including the vehicles' value. They also maintain that the value of the vehicles was not required for the unlawful driving offense. We are not persuaded by either argument.

Vehicle Code section 10851, subdivision (a) provides that "[a]ny person who drives or takes a vehicle not his or her own, without the consent of the owner thereof, and with intent either to permanently or temporarily deprive the owner thereof of his or her title to or possession of the vehicle, whether with or without intent to steal the vehicle, or any person who is a party or an accessory to or an accomplice in the driving or unauthorized taking or stealing, is guilty of a public offense. . . ." "By its terms, [Vehicle Code] section 10851 is a 'wobbler' offense that may be punished as either a felony or a misdemeanor." (*People v. Gutierrez* (2018) 20 Cal.App.5th 847, 853.)

"On November 4, 2014, California voters enacted Proposition 47 (the Safe Neighborhoods and Schools Act), which designates as misdemeanors certain drug- and theft-related offenses that previously were felonies or wobblers. [Citation.] For example, Proposition 47 added section 490.2 to the Penal Code. It provides: 'Notwithstanding Section 487 or any other provision of law defining grand theft, obtaining any property by theft where the value of the money, labor, real or personal property taken does not exceed nine hundred fifty dollars ($950) shall be considered petty theft and shall be punished as a

misdemeanor . . . .'" (*In re J.R.* (2018) 22 Cal.App.5th 805, 818-819, review granted Aug. 15, 2018, S249205.)[11]

After appellant admitted the two Vehicle Code section 10851 offenses, the Supreme Court issued *Page, supra,* 3 Cal.5th 1175. In that case, the court considered whether a defendant serving a felony sentence for taking or driving a vehicle in violation of Vehicle Code section 10851 qualified for misdemeanor sentencing under Proposition 47. The court acknowledged there are multiple ways of violating Vehicle Code section 10851. A defendant can violate the statute by committing a theft, i.e., taking or driving away a vehicle with the intent to permanently deprive the owner of possession or driving or continuing to drive the vehicle after the theft is complete. (*Page,* at pp. 1180, 1182.) When a defendant violates Vehicle Code section 10851 by obtaining by theft a vehicle valued at $950 or less, the defendant qualifies for misdemeanor sentencing under section 490.2, the new petty theft provision of Proposition 47, and may be eligible for Proposition 47 relief. (*Page*, at pp. 1182-1183.) But where the defendant violates Vehicle Code section 10851 by taking a vehicle without the intent to permanently deprive the owner of possession or by driving the vehicle after completing the theft,

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[11] The Supreme Court granted review in *In re J.R.* and deferred briefing pending its decision in *People v. Bullard* (Dec. 12, 2016, E065918) [nonpub. opn.], review granted Feb. 22, 2017, S239488.) The issue on review concerns whether equal protection or the avoidance of absurd consequences requires that misdemeanor sentencing under sections 490.2 and 1170.18 extend not only to those convicted of violating Vehicle Code section 10851 by theft, but also to those convicted of taking a vehicle without the intent to permanently deprive the owner of possession. (See *Page, supra*, 3 Cal.5th 1175, 1188, fn. 5.)

the defendant is not eligible for Proposition 47 relief, regardless of the value of the vehicle. (*Page*, at p. 1183.)

In *In re J.R.,* the parties agreed that the minor's felony adjudication for violating Vehicle Section 10851 could not be upheld "because it is not clear from the record whether the adjudication was theft-based or nontheft-based and the People neither alleged nor proved that the value of the car exceeded $950." (*In re J.R., supra,* 22 Cal.App.5th at pp. 819-820, rev. granted.) The same is true here. Appellant admitted "driving or taking" the vehicles without consent, and the prosecution did not allege or prove the vehicles' value. The record is insufficient, therefore, to determine whether appellant violated Vehicle Code section 10851 by stealing the vehicles and, if he did, whether the vehicles were worth $950 or less. Although a probation report states that the owner's insurance company paid $2,000 to repair damage to one of the vehicles, this statement does not conclusively establish its value.

The Court of Appeal in *In re J.R.* determined that a new jurisdictional hearing was required under similar circumstances. It recognized that "Proposition 47 was in effect at the time of the minor's adjudication. But Proposition 47 did not amend Vehicle Code section 10851, subdivision (a) and, as the ensuing Courts of Appeal opinions show, its impact on that provision was not obvious" until *Page* was decided. (*In re J.R., supra,* 22 Cal.App.5th at p. 822, rev. granted.) Accordingly, the court remanded the matter to the juvenile court to allow the People an opportunity to prove a felony violation of Vehicle Code section 10851. (*In re J.R.,* at pp. 822-823.) We do the same here. As the People concede in their brief, "[i]f the value of the vehicles is

required, the case should be remanded to allow the prosecution to establish that the vehicles were worth more than $950."

DISPOSITION

The juvenile court's September 29 jurisdictional order finding the allegations in the amended August 11 petition to be true is affirmed.

The dispositional portion of the September 29 order, which sets the maximum period of confinement at four years, four months, is conditionally reversed and the matter is remanded to the juvenile court for further proceedings. The People shall have the option on remand to attempt to prove that the value of each vehicle taken in violation of Vehicle Code section 10851 exceeded $950. Alternatively, the People may accept a reduction of the Vehicle Code section 10851 violations to misdemeanors. If the People elect to accept a reduction in the offenses to misdemeanors, or if it is shown that the vehicles were valued at $950 or less, the juvenile court is directed to amend its dispositional order accordingly. If it is determined that the Vehicle Code section 10851 violations remain felonies, the court shall reinstate its dispositional order.

NOT TO BE PUBLISHED.

PERREN, J.

We concur:

GILBERT, P. J.

YEGAN, J.

Benjamin R. Campos, Commissioner
Superior Court County of Los Angeles

Mary Bernstein, under appointment by the Court of Appeal, for Defendant and Appellant.

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